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Via Fax 916 341-5400 and E-Mail

State Water Resources Control Board
Ms. Gita Kapahi, Chief
Bay/Delta Special Projects Unit
P. O. Box 2000
Sacramento, CA 95812-0100

Re: Triennial Review 1995 Water Quality Control Plan

Dear Ms. Kapahi:

The South Delta Water Agency and Central Delta Water Agency submit the following comments for consideration regarding the SWRCB's review of the 1995 Water Quality Control Plan.

1. Neither the 1995 Plan nor the implementation thereof adequately protects agricultural beneficial uses.

Originally, D-1422 set a 500 TDS objective at Vernalis for the entire year. That parameter was first changed in the 1991 WQCP. In that plan, the year round 500 TDS objective was changed to a 0.7 EC from April 1 through August 31 and 1.0 EC from September 1 to March 31 standard at four compliance locations of Vernalis, San Joaquin River at Brandt Bridge, Old River near Middle River, and Old River at Tracy Road Bridge.

These objectives contained the following qualification:

If a three-party contract has been implemented among the DWR, USBR, and SDWA, that contract will be reviewed prior to implementation of the above and, after also considering the needs of other beneficial uses, revisions will be made to the objectives and compliance/monitoring locations noted, as appropriate.

The environmental analysis of the effects of the 1991 Plan stated the following:

South Delta. The implementation plan is comprised of two interim stages and a final stage. Interim stage 1 " 500 mg/l mean monthly TDS all year at Vernalis.

Interim Stage 2 " (to be implemented no later than 1994) 0.7 mmhos/cm EC April 1 to August

31, 1.0 mmhos/cm EC September 1 to March 31; thirty-day running average at Vernalis and Brandt Bridge, with water quality monitored at three current interior stations . . . Mossdale, Old River near Middle River and Tracy Road Bridge; and an additional interior monitoring station on Middle River at Howard Road Bridge.

Final Stage " (to be implemented no later than 1996) 0.7 mmhos/cm EC April 1 to August 31, 1.0 mmhos/cm EC September 1 to March 31; thirty-day running average at Vernalis and Brandt Bridge on the San Joaquin River, with two interior stations at Old River near Middle River and Old River near Tracy Road Bridge. . . or if a three-party contract has been implemented among DWR, USBR, and the SDWA, that contract will be reviewed prior to implementation of the above and, after also considering the needs of other beneficial uses, revisions will be made to the objectives and compliance/monitoring locations noted above, as appropriate.

After numerous subsequent actions, most of which were never implemented, the Board adopted the 1995 Water Quality Control Plan. With regard to agricultural beneficial uses, this Plan also set the 0.7/1.0 EC value at the four South Delta compliance locations. Footnote No. 5 which is a footnote to the Old River near Middle River and Old River at Tracy Road Bridge compliance locations states:

The EC objectives shall be implemented at this location by December 31, 1997.

The Table with these Objectives indicated that the Vernalis and Brandt Bridge locations would meet the 0.7/1.0 objective. The 1995 Plan Objectives also contained the same qualification regarding the implementation of a three-party contract between DWR, USBR, and SDWA referenced above.

The 1995 Plan assumed other actions and processes (some of which were ongoing at the time) would contribute to a decrease in San Joaquin River salinity, and therefore decrease the need for releases from New Melones to meet the Vernalis and the other Objectives. The Plan recommended source control, real time management of drainage, coordination of drainage discharges with high flows, and further study of an out-of-valley drain.

D-1641 implemented the 1995 Water Quality Control Plan. Its Table 2 Water Quality Objectives for Agricultural Beneficial Uses contained a new footnote 5, this time applying to Brandt Bridge, Old River near Middle River, and Old River at Tracy Road Bridge. This footnote stated:

The 0.7 EC objective becomes effective on April 1, 2005. The DWR and the USBR shall meet the 1.0 EC at these stations year round until April 1, 2005. The 0.7 EC objective is replaced by the 1.0 EC objective from April through August after April 1, 2005, if permanent barriers are constructed or equivalent measures are implemented in the southern Delta and an operations plan that reasonably protects southern Delta agriculture is prepared by the DWR and the USBR and approved by the Executive Director of the SWRCB. The SWRCB will review the salinity objectives for the southern Delta in the next review of the Bay-Delta objectives following construction of the barriers.

This footnote is significantly different than the one in the 1995 Plan. Not only does it further delay compliance with the 0.7 EC Objective at the three interior southern Delta stations, it also allows the Objective to rise (provide less protection) once tidal barriers are installed. Tidal barriers can assist in meeting a 0.7 EC Objective, but do not substitute for such an Objective. In the development of these Objectives the Board found 0.7/1.0 EC necessary to protect agricultural beneficial uses, but failed to require implementation of these protections for approximately 15 years. The earlier Board plan anticipated compliance at Brandt Bridge (as well as Vernalis), but the Board never followed through on its commitment. It should be noted that 1.0 EC provides less protection than the previous 500 TDS objective. There has been no finding by the Board which would support a relaxation of this earlier standard. It should also be noted that the South Delta in water channel quality was traditionally better than these standards prior to the operation

of the CVP.

Also with regard to this and prior plans, the Board should note that the USBR suspended negotiations with SDWA regarding a plan for fixing the South Delta problems; no agreement is therefore anticipated. Other references in the plans to the implementation of "equivalent protections" to tidal barriers would appear to be meaningless. Absent the re-establishment of historical flows and a cessation of exports, there is no other means by which to address South Delta water quality, quantity, and levels than a combination of tidal barrier operations, improved San Joaquin water quality, and adjustment of export rates. Hence, the Plan should not make references to such "equivalent protections."

The current 0.7/1.0 EC Objective at Vernalis is not implemented in a fair manner. When the Objective switches from 1.0 to .7, the Bureau is able to use the 30-day running average calculation to continue poor water quality until such time as the fishery pulse flow occurs. This results in water quality above 0.7 from April 1 through April 15 in most every year. In order to protect agricultural beneficial uses beginning on April 1, the 30-day running average calculation should restart on April 1 each year.

The agricultural beneficial use objectives should also be re-examined to expand the time frame during which the 0.7 EC value applies. Significant data exists to indicate that the months of March, September, and October also typically include significant irrigation periods and thus argue for the lower 0.7 value. The Board's original calculations examine the needs of alfalfa (fall and winter) and beans (spring and summer) as indicator crops for agriculture. This too should be re-examined as the cropping patterns in the Delta now include more tree crops and grape vines which generally require a better quality of water.

The Board should therefore revisit the Interior South Delta Objectives and immediately implement the 0.7/1.0 EC value at all four South Delta compliance locations. The Board should also consider setting new compliance locations to insure that there is unidirectional flow in South Delta channels which is necessary to maintain adequate water quality throughout the area, not just at the measuring stations.

2. D-1641 allows the USBR and DWR to proceed with the SJRA as a means of providing fishery flows at Vernalis during spring and fall. A recent court decision requires the Board to either implement the 1995 Plan requirements for fishery flows or change them.

SDWA believes the elevated spring and fall flows are a misuse of high quality water. Recent work done through the Stanislaus Stakeholder Process indicates that changes in flows not prolonged increased flows cause out migrating smolts to move downstream. It would be a more reasonable use of the high quality tributary water if the Board would adopt a different flow schedule to provide for these changes in flows. These, in combination with the use of the HOR barrier and decreased export pumping at critical times would provide better protection for fisheries without wasting large amounts of high quality tributary water. SDWA understands that other parties are prepared to submit supporting evidence on this issue.

Further, the Board must revisit the method by which the San Joaquin tributaries provide water for the pulse flows. The Board did not require the sellers of this water to decrease their consumptive use. The sellers are permitted to increase fish flows at no water cost to themselves by shifting reservoir releases from summer releases (which are important for downstream users, water quality control, and public trust needs) to releases for fish in spring and fall. The sellers then refill reservoir storage whenever they can. They are not required to refill only with water that would otherwise be lost to beneficial use, such as water contributing to Delta outflow. [The Board currently has a protest before it regarding the alleged failure of the selling districts to abide by the refill restrictions contained in D-1641.] More importantly, the operators of the sellers' dams and reservoirs admitted in a separate board hearing that they did not operate according to the refill restrictions in D-1641.

The Board should therefore require that sales of water for fishery flows be limited to water resulting from a decrease in consumptive use (as in CVPIA Â§ 3405(a)(1)(I)) and not allow refill of released water in order that the sellers don't end up selling water that would otherwise be beneficially used to meet other downstream needs.

3. The issues set forth in No. 2 above highlight another problem created by the implementation of the 1995 Plan. D-1641 requires flows at Vernalis from February through June, and in October. Without a decrease in consumptive use by any upstream user, the mandatory high flows necessarily mean there will be lower flows at some other time. This in fact has been the case. The Board should note that not only can upstream dam operators manipulate storage releases to the detriment of downstream needs, but no dam on the San Joaquin or its tributaries is required to make releases for mainstem and Delta consumptive use needs of riparians, senior appropriators, and users covered by the Delta Protection Act.

The Board should therefore set minimum flows year round in amounts necessary to protect beneficial uses. This would prevent a shift in the timing of flows and also prevent upstream dam operators from being able to decrease "discretionary" flows to the detriment of downstream users.

4. In D-1641, the Board attempted to partially address South Delta Water level issues by requiring a Response Plan for joint point operations ("JPOD"). The Response Plan was supposed to be a way of anticipating and avoiding water level impacts, not for existing pumping, but from the incremental effects of JPOD. This has been an utter failure. In each year since D-1641 has been adopted (and in fact since the 95 Plan was adopted), local diverters have been injured due to low water levels. The Response Plan has failed to accomplish its goal. Only after problems arise is mitigation proposed and much later implemented. In addition, other Board ordered actions including dredging have never occurred despite being preconditions to JPOD.

The Board should admit its error and adopt water level objectives in the South and Central Delta. These objectives should be sufficient to protect not only agricultural diversions, but also fishery, recreational, and other public trust uses. This year again, Middle River was virtually dry during periods of November and December and clearly adversely impacted beneficial uses.

5. Another aspect of the 1995 Plan which has not been successful is its treatment of San Joaquin River salinity problems. The Plan assumed New Melones releases, Regional Board actions, and drainage control activities would result in the protection of agricultural beneficial uses. This has not occurred as anticipated. New Melones is operated according to a plan which anticipates insufficient water will be available to dilute San Joaquin River flows in most Julys and Augusts in years drier than those designated "above normal." The Regional Board has failed to set an objective upstream of the San Joaquin River and currently proposes drainage credits which would allow a continuance of the high saline drainage. Upstream drainage efforts have resulted in the concentration of salts not the disposal thereof, and have been more than offset by increased deliveries to wetlands/refuges which have increased the need for winter water quality releases. The Board should therefore consider amending the 1995 Plan to address both the decreased San Joaquin River flows and deliveries of export water to areas which result in drainage to the River. In addition, the Board should set a new compliance location for the 0.7/1.0 EC value at or upstream of the San Joaquin River's confluence with the Newman Wasteway.

6. The 95 Plan contained the "no net loss" principle eventually implemented by D-1641 (see Table 3, footnote 18). The 95 Plan should be a method by which beneficial uses are protected. A no net loss protection on junior water right holders (CVP and SWP exports) is contrary to California water law and the antithesis of protecting beneficial users. The Plan should therefore be amended to include a method of implementation which does not protect any particular level of exports, but rather protects beneficial uses and allows exports only if beneficial uses are protected. There is no factual dispute that exports cause low water levels and null zones in the

South Delta, poor San Joaquin River quality, and kill endangered and threatened species. Exports should therefore only be allowed when objectives to protect these beneficial uses are anticipated to be met on a long-term basis.

7. The 95 Plan should be amended with regard to the dissolved oxygen objective. The results of the Regional Board's dissolved oxygen TMDL process indicate that the cause of the problem is specifically due to the construction (dredging) of the Deep Water Ship Channel near Stockton. The greater volume of water in the channel resulting from the dredging cannot be flushed out by existing flows and becomes a place where algae die and consume oxygen. The flows in the area are the result of decreased Delta inflow from the San Joaquin River and export operations which reverse flows. The data indicates that even if almost all of the nutrients were removed from the San Joaquin water, the problem would still exist.

The Board should therefore consider setting mandatory minimum flows in summer and fall (and amend other mandatory flows as necessary) to provide adequate protection for dissolved oxygen.

This triennial review presents an opportunity to address the issues that the 95 Plan and D-1641 missed or exacerbated. The problems and causes are known, and the Board should act accordingly in order to protect beneficial uses. Please call me if you have any questions or comments.

Very truly yours,

JOHN HERRICK

JH/dd

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